

Meeting Date: 6/16/2015

Report Type: Consent

Report ID: 2015-00480

Title: Contract: Prepaid Postage and Related Postage Meter Equipment and Services (Two-Thirds Vote Required)

Location: Citywide

Recommendation: Pass a Resolution 1) suspending competitive bidding in the best interests of the City for the purchase of prepaid postage and mailing equipment rental and maintenance; and 2) authorizing the City Manager or his designee to execute a contract with Pitney Bowes for prepaid postage and mailing equipment rental and maintenance during FY2015/16 in an amount not to exceed \$380,000.

Contact: Yvette Rincon, Acting Facilities Manager, (916) 808-5827, Department of Public Works

Presenter: None

Department: Public Works Department

Division: Central Services

Dept ID: 13001552

Attachments:

1-Description/Analysis

2-Resolution

3-Contract - Pitney Bowes

City Attorney Review

Approved as to Form

Kourtney Burdick

6/4/2015 3:04:32 PM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 6/1/2015 8:32:23 AM

Description/Analysis

Issue Detail: The Department of Public Works, Facilities and Real Property Management Division, provides US mail services to City departments through the division's Central Services section. This includes providing access to Pitney Bowes postage meter equipment with prepaid postage for convenient stamping of US mail. This report recommends actions necessary to authorize expenditures for prepaid postage, and mailing equipment rental and maintenance with Pitney Bowes from July 1, 2015 through June 30, 2016.

Policy Considerations: The recommendations in this report are in accordance with City Code Chapter 3.56.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): No environmental review is necessary because the recommendations in this report involve the ongoing purchase of supplies and are not considered to be a project in accordance with Section 15378(b)(2) of the CEQA Guidelines.

Sustainability: Not applicable

Commission/Committee Action: None

Rationale for Recommendation: This report recommends actions necessary to authorize expenditures, in support of City departments, for prepaid postage and mailing equipment rental and maintenance with Pitney Bowes from July 1, 2015 through June 30, 2016.

Suspending competitive bidding is recommended for the following reasons:

- Central Services has experience with other vendors but has found that Pitney Bowes offers superior service.
- Central Services previously purchased Pitney Bowes mail equipment, which requires that postage also be purchased from Pitney Bowes. Purchasing postage from another source would require purchasing new postage equipment, thereby increasing the overall cost to the City.
- The City receives a discount on the pre-paid postage costs when buying through Pitney Bowes, paying \$0.435 rather than the \$0.48 metered mail rate for each first-class standard letter size envelope mailed.
- Continuing to purchase prepaid postage and the related services of postage meter rental and maintenance from Pitney Bowes will prevent an interruption of this critical service to City departments.

Financial Considerations: This report recommends awarding a contract in an amount not to exceed \$380,000 to Pitney Bowes for use during FY2015/16. This amount was determined based on a review of historical expenditures and a consideration of future needs, and includes estimated expenditures of \$360,000 for prepaid postage, and \$10,000 each for mailing equipment rental and maintenance.

Funding for these purchases will initially be provided by the Department of Public Works FY2015/16 operating budget (General Fund, Fund 1001). Usage by departments is tracked on a monthly basis and departments or capital improvement projects that utilize the service are

charged for their share of the cost. Sufficient funding will be available in each of these budgets upon adoption of the FY2015/16 budget.

Local Business Enterprise (LBE): Pitney Bowes is not certified as a local business enterprise.

RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

June 16, 2015

SUSPENDING COMPETITIVE BIDDING FOR THE PURCHASE OF PREPAID POSTAGE, AND MAILING EQUIPMENT RENTAL AND MAINTENANCE

BACKGROUND

- A. The Department of Public Works, Facilities and Real Property Management Division, provides US mail services to City departments through the division's Central Services section. This includes providing access to Pitney Bowes postage meter equipment with prepaid postage for convenient stamping of US mail.
- B. City Code section 3.56.230 allows the City Council to suspend competitive bidding for any purchase or contract when, upon a two-thirds vote, it is determined that it is in the best interests of the City to do so.
- C. Suspending competitive bidding for the purchase of prepaid postage and mailing equipment rental and maintenance from Pitney Bowes is in the best interest of the City because:
- Central Services has experience with other vendors but has found that Pitney Bowes offers superior service.
 - Central Services previously purchased Pitney Bowes mail equipment, which requires that postage also be purchased from Pitney Bowes. Purchasing postage from another source would require purchasing new postage equipment, thereby increasing the overall cost to the City.
 - The City receives a discount on the pre-paid postage costs when buying through Pitney Bowes, paying \$0.435 rather than the \$0.48 metered mail rate for each standard letter size envelope mailed.
 - Continuing to purchase prepaid postage and the related services of postage meter rental and maintenance from Pitney Bowes will prevent an interruption of this critical service to City departments.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. In the best interests of the City, competitive bidding is suspended for the purchase of prepaid postage and mailing equipment rental and maintenance from Pitney Bowes during FY2015/16.
- Section 2. The City Manager or the City Manager's designee is authorized to execute a contract with Pitney Bowes (attached as Exhibit A) for prepaid postage, and mailing equipment rental and maintenance during FY2015/16 in an amount not to exceed \$380,000.

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Exhibit A – Contract with Pitney Bowes

CONTRACT

Services/Supplies: Postage and Postal Services

THIS CONTRACT is made and entered into on 5-26, 2015, by and between the City of Sacramento, a municipal corporation ("City") and Pitney Bowes, Inc., a Delaware corporation headquartered in Stamford, Connecticut ("Contractor"), who agree as follows:

City shall purchase, and Contractor shall supply, in accordance with the above-referenced Purchase Order, and the attached Pitney Bowes Terms, which are incorporated herein by this reference, the following supplies and/or services:

Pre-paid postage and mailing equipment rental and maintenance in the Department of Public Works through June 30, 2016

Contract amount not-to-exceed: \$380,000.00

Executed as of the date stated above.

CONTRACTOR: Pitney Bowes, Inc.

Address: 1 Elmcroft Road, Stamford CT 06926

Phone #: 480-206-2984 Fax #: 203-460-5758 Email: bill.walter@pb.com

State Tax I.D. #: _____ Fed. Tax I.D. #: 06-0495050

City of Sacramento Business Operation Tax Certificate #: 3953
(Contract award will not be processed without a valid and current Certificate Number.)

By: (signature of authorized person) 
Print Name: Bill Walter Title: Government Channel Manager

CITY OF SACRAMENTO

By: _____

Print Name/Title: _____
For: John F. Shirey, City Manager

Approved As To Form:

Attest:


City Attorney

City Clerk

TERMS AND CONDITIONS

1.) CONTRACT: Unless the City of Sacramento ("City") and the Contractor have both signed a separate written agreement, or the City is procuring goods through a cooperative agreement, this Purchase Order ("PO") and any referenced attachments constitute the City's offer to Contractor and shall become a binding contract on Contractor's acceptance through acknowledgement or commencement of performance.

2.) DELIVERY: All shipments are F.O.B. delivered with freight prepaid. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products and/or services deemed necessary under this Purchase Order. The City reserves the right to request and receive a copy of the freight bill of lading on all purchases shipped F.O.B. prepaid and added.

3.) TIME FOR DELIVERY: Time is of the essence in the delivery of services and/or items procured by this PO. Contractor shall notify the City of Sacramento ("City") department that placed the order (as indicated in the "Bill To:" address) if unable to make delivery on or before the Due Date. Periods of performance may be extended if, in the sole opinion of the City, the cause of delay justifies an extension.

4.) MISCELLANEOUS CHARGES: No additional charges, including without limitation: charges for transportation, fuel surcharges, containers, packing, etc., shall be allowed unless specified in this PO.

5.) HOLD HARMLESS: The Contractor shall defend, indemnify, and hold the City of Sacramento, its officers, agents, and employees, harmless from and against any and all claims, actions, costs, proceedings, damages, and other liabilities, including attorney fees, caused by defect(s) in the item(s) purchased hereunder, or resulting from the Contractor's or the City's use of any copyrighted, or non-copyrighted composition, process, patented or non-patented invention, articles or appliances furnished or used under this order, and agrees to defend, at Contractor's expense, any and all actions brought against the City of Sacramento or themselves because of unauthorized use of such articles.

6.) EXCISE TAX: The City of Sacramento, as a government agency, is exempt from the payment of Federal Excise Tax. An exemption certificate will be issued upon request. If federal excise tax is applicable to the transaction, it must be so stated and excluded from the price.

7.) SALES AND USE TAX: The City is not exempt from paying sales tax. Sales tax must be shown on the invoice as a separate line item. On out-of-state purchases, the Contractor shall list their Use Tax Permit Number issued by the California State Board of Equalization which authorizes the Contractor to charge and collect California Sales Tax. The PO will include sales tax, if applicable to the purchase, regardless of whether an out-of-state collects California State sales tax or not. The City shall pay Use Tax directly to the Board of Equalization if the out-of-state Contractor is not required to collect California Sales Tax.

8.) BUSINESS OPERATIONS TAX CERTIFICATE (BOTC): The Sacramento City Code requires any person or firm conducting business within or with the City of Sacramento to pay a Business Operations Tax and have a current Business Operations Tax Certificate issued by the City Revenue division.

9.) CONTRACTOR COUNTEROFFERS AND DIFFERENT TERMS AND CONDITIONS: The City's subsequent performance shall not be construed as either acceptance of additional and/or different Terms and Conditions or a counteroffer by the Contractor, nor shall the City's subsequent performance be viewed as acceptance of any provision of the Uniform Commercial Code, as adopted by any State, that is contrary to the Terms and Conditions contained herein. All materials and/or services supplied by the Contractor shall conform to the applicable requirements of the Sacramento City Charter, Sacramento City Code, and all applicable State and Federal laws, as well as conforming to the requirements contained herein. The California Commercial Code shall apply except as otherwise provided in the Contract.

10.) DEFAULT BY CONTRACTOR: In case of default by the Contractor, the City of Sacramento reserves the right to procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the Contractor, the difference between the price named in the PO and actual cost thereof to the City of Sacramento. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made.

11.) PAYMENT TERMS: Payment terms are NET/30 days unless otherwise indicated and accepted by the City. All cash discounts shall be taken and computed from the date of delivery or completion and acceptance of the material, or from the date of receipt of the invoice, whichever is latest.

12.) INSPECTION AND ACCEPTANCE: Inspection and acceptance will be at the destination (the "Ship To:" address), unless otherwise stated. Risk of loss will be on the Contractor until the delivery and acceptance, and after any rejections, unless the loss results solely from the negligence of the City. Notwithstanding the requirements for any City inspection and test contained in specifications applicable to this Contract, except where specialized inspections or tests are specified for performance solely by the City, the Contractor shall perform or have performed the inspections or tests required to substantiate that the supplies and services provided under the Contract conform to the drawings, specifications, and other Contract requirements, including, if applicable, the technical requirements for the manufacturer's part number(s) specified herein. The cost of storing rejected material and the cost for shipping rejected material back to the origin point shall be borne by the Contractor.

13.) VARIATIONS IN QUANTITY: No variation in the quantity of any item called for by this Contract will be accepted unless such variation has been caused by conditions of loading, packing, shipping, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Contract.

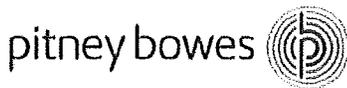
14.) INVOICING: Invoices shall be submitted to the "Bill To:" address specified in the PO. The invoice shall contain the following information: PO number, description of supplies or services, item numbers, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of the shipment will be shown for shipments on Government Bills of Lading. Unless otherwise specified, payment will be made on partial deliveries accepted by the City when the City determines, in its sole discretion, that the amount due on such partial deliveries so warrants. Requests for payment status should be addressed to the City department as indicated in the "Bill To:" address.

15.) COMMERCIAL WARRANTY: The Contractor agrees that the supplies and/or services furnished under this Contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies and/or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City at law or equity or by any other clause of this Contract.

16.) ASSIGNMENT OF CLAIMS: Claims for monies due or to become due under this Contract shall be assigned only with prior written consent of the City Manager or his/her designated representative.

17.) GLOBALLY HARMONIZED SYSTEM OF CLASSIFICATION AND LABELING CHEMICALS: It is mandatory for a manufacturer, supplier, or distributor, to supply a SDS (Safety Data Sheet) with the first shipment of hazardous material to each City location receiving the material. Also, when the content of a SDS is revised, the Contractor is required to provide a revised SDS to each City location receiving the material.

18.) GOVERNING LAW: This PO shall be deemed to be made in the County of Sacramento, State of California, and shall in all respects be construed and governed by the laws of the State of California.



PITNEY BOWES TERMS

GENERAL TERMS

These General Terms apply to any transaction you enter into with Pitney Bowes. Other provisions in the Pitney Bowes Terms may also apply, depending on your transaction. Please read these provisions carefully as they constitute part of your agreement with Pitney Bowes.

G1. DEFINITIONS

The following terms mean:

"Agreement" - the Order and any terms referred to in or attached to the Order.

"Bank" - The Pitney Bowes Bank, Inc.

"Consumable Supplies" - ink, ink rollers, toner and drum cartridges, ribbons and similar items. Product-specific consumable supplies are identified in the operator guides.

"Covered Equipment" - the equipment leased, rented or sold to you from PBGFS or PBI that is covered by the SLA as stated on the Order, excluding any Usage-based Equipment, Meter or standalone software.

"Equipment" - the equipment listed on the Order, excluding any Meter and standalone software.

"Excluded Circumstances" - your negligence, an accident, usage which exceeds our recommendations, use of equipment in a manner not authorized by this Agreement or any operator guide, use of equipment in an environment with unsuitable humidity and/or line voltage, damage in transit, virus contamination or loss of data, loss or fluctuation of power, fire, flood or other natural causes, external forces beyond our control, sabotage or service by anyone other than us, failure to use applicable software updates, use of equipment with any system for which we have advised you we will no longer provide support or which we have advised you is no longer compatible, or use of third party supplies (such as ink), hardware or software that results in (i) damage to equipment (including damage to printheads), (ii) poor indicia, text or image print quality, (iii) indicia readability failures or (iv) a failure to print indicia, text or images.

"Initial Service Term" - twelve (12) months, or, if you have a Lease, the Lease Term.

"Initial Term" - the period listed on the Order.

"Lease" - the Order and the Lease terms and conditions attached to the Order.

"Lease Term" - as defined in the Lease.

"Lockbox Bank" - any bank through which you transfer funds to the USPS.

"Meter" - any postage meter supplied by PBI under the Order, including (i) in the case of a Connect+ mailing system, the postal security device, the application platform, the system controller and the print engine and (ii) in the case of all other mailing systems, the postal security device, the user interface or keyboard and display and the print engine.

"Normal Working Hours" - 8 a.m. - 5 p.m., Monday - Friday, excluding PBI-observed U.S. holidays, in the time zone where the Equipment or other items are located.

"Order" - the executed order between the applicable Pitney Bowes company and you for the equipment covered by the order.

"PBGFS" - Pitney Bowes Global Financial Services LLC or a wholly-owned subsidiary of Pitney Bowes Inc.

"PBI" - Pitney Bowes Inc.

"PBI Equipment" - PBI-branded equipment.

"Pitney Bowes" - PBI, PBGFS and their respective subsidiaries.

"Reserve Account" - the Postage By Phone Reserve Account that you maintain at the Bank.

"Service" - the service option for the Covered Equipment selected by you on the Order.

"SLA" - the Service Level Agreement.

"Third Party Equipment" - equipment manufactured by a party other than us.

"Usage-based Equipment" - equipment for which charges are based on volume of use.

"USPS" - the United States Postal Service.

"We," "our," or "us" - the Pitney Bowes companies with whom you've entered into the Order.

"You," "your," or "Client" - the entity identified on the Order.

G2. WARRANTY

G2.1 (a) PBI warrants that the PBI Equipment will be free from defects in material and workmanship and will perform according to the operator guides for a period of ninety

(90) days from the date the Equipment or other item is installed at your location.

(b) PBI warrants that the Service will be performed in a professional and workmanlike manner.

(c) As your sole remedy in the event of a warranty claim, we will either repair or replace the Equipment or, in the case of defective Service, reperform the Service.

(d) A "defect" does not include the failure of rates within a rate update to conform to published rates.

(e) There is no warranty for Equipment requiring repair or replacement because of any Excluded Circumstance.

(f) The print engine(s), print engine components, structural components and printed circuit board assemblies supplied with the PBI Equipment may be reclaimed, reconditioned or remanufactured. Any such item is warranted to perform according to the same standards as the equivalent new item.

(g) The warranty does not cover Consumable Supplies.

G2.2 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF AND OUR SUPPLIERS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT OR SERVICES.

G2.3 PBI MAKES NO REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY EQUIPMENT. PBI AGREES TO PASS THROUGH TO YOU ALL THIRD PARTY EQUIPMENT WARRANTIES TO THE EXTENT PERMITTED.

G3. LIMITATION OF LIABILITY

G3.1 PBI'S TOTAL LIABILITY (INCLUDING ANY LIABILITY OF ITS SUPPLIERS) IS LIMITED TO THE FEES PAID BY YOU FOR THE APPLICABLE EQUIPMENT OR SERVICES.

G3.2 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY DAMAGE YOU MAY INCUR BY REASON OF YOUR MISUSE OR NEGLIGENT USE OF THE EQUIPMENT, OR YOUR NEGLIGENT ACTS OR OMISSIONS.

G3.3 NEITHER PBI (INCLUDING ITS SUPPLIERS) NOR YOU WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA, OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

G4. DEFAULT AND REMEDIES

G4.1 Default and Remedies. In the event that you do not make any payment within three days after the due date, you breach any other obligation under this Agreement or under any other agreement with PBI or PBGFS and such breach continues for thirty days after we give you notice or you become insolvent or file for bankruptcy, you shall be in default and we may:

(a) cancel this Agreement and any other agreements PBGFS or PBI has with you;

(b) require immediate payment of all payments due under a Lease(s) or other agreements, whether accrued or due in the future;

(c) disable the Meter;

(d) require you to return the Equipment, Meter and software;

(e) if you do not return the Equipment, require you to make immediate payment of an amount equal to the value of the Equipment at such time, as determined by us;

(f) charge you a late charge for each month that your payment is late;

(g) charge you interest on any late payment from its due date until paid in full at the lesser of 18% per year or the maximum rate allowed by law;

- (h) charge you a check return fee for payments made by you with insufficient funds; and
- (i) pursue any other remedy, including repossessing the Equipment without notice to you. By repossessing the Equipment or Meter, we are not waiving our right to collect the balance due.

G4.2 **Enforcing Our Rights.** You agree to pay all our costs, including attorneys' fees, in enforcing our rights under this Agreement.

G4.3 **Suspension of Services.** PBI may suspend any services during any period in which your account is more than thirty (30) days past due.

G5. TAXES

You agree to pay Pitney Bowes for all sales, use, property or other taxes (excluding taxes on or measured by net income) related to the Lease and/or rental agreement and related payments or services, the Equipment, Equipment location, Meter and Meter location. With respect to property and similar taxes, Pitney Bowes will determine the amount of such taxes to be charged to you based on its reasonable valuation of the Equipment or of the Meter, taking into consideration applicable tax rates and depreciation. You agree to pay a tax administrative charge to be determined by Pitney Bowes without reference to the tax charged or services performed; such fee and charge not to exceed in the aggregate \$35 for each year for each Lease schedule or rental agreement.

G6. EMBEDDED SOFTWARE

Our Equipment may contain embedded software. You agree that: (i) PBI and its licensors own the copyrights and other intellectual property in and to the embedded software; (ii) you are licensed only to use the embedded software with our Equipment in which the embedded software resides; (iii) you will not copy, modify, de-compile, or otherwise attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; (iv) you will not distribute or otherwise disclose the embedded software (or any portion thereof) to any other person; and (v) you may not export the embedded software in contravention of applicable export control laws. The embedded software contains third party software, which, notwithstanding the above, is subject to any terms that accompany such third party software.

G7. INTERNET ACCESS POINT

The internet connectivity for the Equipment or Meter may use an internet access point (e.g., wireless router) provided by us. You may only use this access point for connectivity between the Equipment or

Meter and the internet and for no other purpose. You agree to pay all costs associated with use of the access point in violation of this restriction.

G.8 ANALOG CONNECTION FEE

All mailing systems include digital connection capability. You should use a digital connection. If you choose to use an analog connection, there will be an additional set-up fee for analog access. This analog set-up fee will be assessed in one non-refundable installment at the beginning of the term of the Agreement if you select an analog connection as your connection method or, if you use an analog connection during the term of the Agreement notwithstanding your original selection of a digital connection as your connection method, in the invoice following your use of an analog connection.

G.9. MISCELLANEOUS

G9.1 **Use of Equipment.** You agree to use the Equipment and Meter only for business or commercial purposes, and not for personal, family, or household purposes.

G9.2 **Force Majeure.** We are not responsible for any delay or failure to perform resulting from causes beyond our control.

G9.3 **Assignment.** You may not assign this Agreement without our prior written consent, which shall not be unreasonably withheld. Any assignment without our consent is void.

G9.4 **No Right to Setoff.** Payments are not subject to setoff or reduction.

G9.5 **Legal Action.** ANY LEGAL ACTION YOU FILE AGAINST US MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO YOUR CLAIM. YOU WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT.

G9.6 **Merger; Amendment; Severability.** This Agreement incorporates all of the terms agreed by both parties and can only be changed by written agreement. You may use a purchase order to offer to obtain Equipment or services but none of its provisions will modify or supersede these provisions unless we expressly agree in writing. If one or more provisions of this Agreement are deemed to be invalid or unenforceable, the remaining provisions will not be affected.

G9.7 **Survival.** Our respective rights and obligations under Section G3 (Limitation of Liability), G4 (Default and Remedies) and G5 (Taxes) survive termination of this Agreement.

G9.8 **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to its conflicts of laws principles.

SERVICE LEVEL AGREEMENT

The following provisions describe SLA options that PBI offers on Covered Equipment. The option you select will be listed on the Order. A separate Software License and Maintenance Agreement will cover software maintenance and will be attached to the Order or presented at the time of installation if you are acquiring software. A separate maintenance agreement will cover maintenance on Usage-based Equipment and will be attached to the Order if you are acquiring Usage-based Equipment.

S1. SERVICE LEVEL OPTIONS

The following describes the two SLA options offered by PBI for the Covered Equipment.

S1.1 Standard SLA

(a) **General.** Under this option, PBI will provide at its option either repair or replacement services for the Covered Equipment during the Initial Service Term or any Renewal Service Term (as defined in Section S3.2) (the "Service Term"). You are also entitled to two preventative maintenance service calls per calendar year. PBI will notify you when preventative maintenance is due or you can request preventative maintenance service.

(b) **Replacement Service.**

(i) If PBI determines that replacement is necessary, PBI will, at no additional cost, promptly ship new, reconditioned, or remanufactured equipment of the same or a functionally equivalent model to replace the affected Covered Equipment.

(ii) Unless PBI instructs you otherwise, within five (5) days of receiving the replacement equipment, you must pack the Covered Equipment to be replaced in the shipping carton that contained the

replacement equipment, place the pre-paid return address label on the carton, and return it to PBI.

(iii) You are responsible for Covered Equipment until PBI receives it.

(c) Repair Service.

(i) If your Covered Equipment needs repair, PBI may provide repair by remote access, diagnostics and service and/or by on-site repair service.

(ii) Repair service is provided only for damage resulting from normal wear and tear. Repair service may include the use of new, reconditioned, or remanufactured parts and assemblies.

(iii) PBI will provide parts or assemblies for discontinued equipment (or equipment not marketed as new) only if available.

(iv) If PBI deems it necessary, PBI will dispatch a service technician to arrive at your location for on-site service. You will not incur hourly charges unless service is performed outside Normal Working Hours, which will be done only with your consent.

(d) **Additional Covered Items.** PBI will provide printheads for Covered Equipment without additional charge, except for

printheads which need to be replaced as a result of any Excluded Circumstance.

S1.2 Performance SLA

- (a) General. Under this option, PBI will provide the following support:
- (i) All coverage provided under Standard SLA.
 - (ii) Quarterly performance reports made available on MyAccount at www.pb.com.
 - (iii) One two hour application consultation for your mailing and shipping needs.
 - (iv) Admission for one person to a PBI mail management seminar.
- (b) Response Time Commitment.
- (1) If PBI determines that on-site service is necessary, PBI will use commercially reasonable efforts to have a service technician on-site (during Normal Working Hours only) within 4 hours or 8 hours, as specified on the Order, after PBI has determined that it cannot resolve the issue remotely (the "Response Time Commitment").
 - (2) The Response Time Commitment relates solely to the arrival of a technician at your location; it is not a guaranteed resolution of the problem within the Response Time Commitment period, nor does it guarantee that all parts necessary to make a repair will be on-site within this time frame.
 - (3) The Response Time Commitment does not apply to Service designated as service by replacement, relocation services, software maintenance, preventative maintenance, operator training, or other services not essential to repair the Covered Equipment.
 - (4) If the Covered Equipment is moved from its original location, PBI may, at its option, remove the Response Time Commitment. If this happens, you will receive Standard SLA and we will adjust the SLA charges payable by you appropriately.
- (c) Liquidated Damages for Failure to Meet Response Time Commitment.
- (1) PBI agrees that if it does not meet the Response Time Commitment, PBI will provide you with a credit equal to the difference between the cost of Standard SLA and Performance SLA for three (3) months.
 - (2) You must use a credit request form to request a credit. You may obtain a credit form from your service technician or by calling the Customer Care Center. The credits are limited to credits for four (4) failures to meet the Response Time Commitment in any twelve (12) month period during the Service Term. **These remedies are your sole remedy for PBI's failure to meet the Response Time Commitment.**

S2. SLA FEES

- S2.1 You will pay the SLA fees for the Initial Service Term and any Renewal Service Term(s).
- S2.2 We may, after the Initial Service Term, increase SLA fees which will be reflected on your invoice.
- S2.3 If the service technician provides service for repairs caused by any Excluded Circumstance, PBI will charge you for the service at PBI's current hourly rates and for any required parts.

S3. SERVICE TERM

S3.1 Term. PBI will provide you with Service for the Initial Service Term and any Renewal Service Terms.

S3.2 RENEWAL SERVICE TERM(S). SERVICE AUTOMATICALLY RENEWS FOR CONSECUTIVE ONE (1) YEAR TERMS (EACH, A "RENEWAL SERVICE TERM"), UNLESS:

- (a) YOU TERMINATE SERVICE UNDER SECTION S3.3; OR
- (b) THE LEASE EXPIRES OR IS TERMINATED (IN WHICH CASE, THE SERVICE TERM WILL TERMINATE ON THE SAME DAY AS THE LEASE); OR
- (c) THE RENEWAL IS PROHIBITED BY APPLICABLE LAW.

S3.3 Ending Your Service.

- (a) If you do not wish to renew Service, you must deliver a written notice (the "Termination Notice") at least sixty (60) days prior to the renewal of the term to us at 2225 America Drive, Neenah, WI 54956. Your Termination Notice must include your customer account number or CAN and lease number (if applicable).
- (b) PBI reserves the right not to renew your SLA for any reason.

S3.4 Service Changes.

- (a) PBI may modify its Service by giving written notice to you (a "Service Change Notice"), which will state whether the change is material.
- (b) After receiving a Service Change Notice, if the change is material, you may terminate Service as described in Section S3.3 above.

S4. EQUIPMENT/METER COVERAGE

You cannot elect to have Service apply to some but not all of the items of Equipment.

S5. ADDITIONAL SERVICE TERMS

These terms apply to all Service options:

- (a) Limitations. Service does not include services and repairs that are made necessary due to any Excluded Circumstance.
- (b) Additional Exclusions. Service excludes the supply of postal and carrier rate changes and Consumable Supplies.
- (c) Replacement Equipment.
 - (i) If you replace any of your Covered Equipment during the Service Term, and the replacement Equipment qualifies for Services, PBI will automatically enroll you for maintenance coverage on the new Equipment at PBI's then current annual rates.
 - (ii) If you acquire an attachment, or add a unit, to your Covered Equipment, PBI will provide coverage for any qualifying attachment or unit and adjust your rate accordingly.
 - (iii) If you choose not to continue coverage on the replacement Equipment, attachment or unit, you may cancel Service for the item within thirty (30) days of the date of your initial invoice for the item from PBI. If you cancel, any further maintenance or repair services on the Equipment, attachment or unit will be subject to PBI's current rates.

EQUIPMENT AND POSTAGE METER RENTAL TERMS AND CONDITIONS

The following provisions apply whenever you rent a Meter or Equipment from Pitney Bowes.

R1. EQUIPMENT/METER RENTAL

R1.1 Fees.

- (a) If you are not leasing the Equipment and paying for it in your lease payment to PBGFS, we will invoice you the Equipment and Meter rental ("rental") fees listed on the Order.
- (b) After the Initial Term, we may increase the rental fees upon 30 days' prior written notice.
- (c) When you receive notice of an increase, you may terminate your rental only as of the date the increase becomes effective.

R1.2 Postage.

- (a) You may transfer funds to the Bank for deposit into your Reserve Account or you may transfer funds to the USPS through a Lockbox Bank. See the "USPS Acknowledgment of Deposit" below for more information.
- (b) Until the end of the Initial Term, we may charge you a fee of up to \$15.00 for refilling your postage. After the Initial Term, we may increase postage refill fees upon 30 days prior written notice.

with applicable law. The USPS rules, regulations, and orders shall prevail in the event of any conflict with any other terms and conditions applicable to any Deposit.

PURCHASE POWER® TERMS AND CONDITIONS

The following provisions apply to the Purchase Power Program (the "Program"). Additionally, you will receive from us a set of more specific provisions within thirty (30) days of the date of this Agreement.

P1.1 General. (a) In order to participate in the Program, you must provide the information described in Section P1.8. (b) The Purchase Power credit line is a product of the Bank and is not available to individuals for personal, family, or household purposes.

P1.2 Account Charges. (a) Your Purchase Power account (the "Account") will be charged for the amount of postage, products, and services requested and the related fees, if applicable. (b) Unless prohibited by law, you agree to pay the fees and charges of which the Bank has given you notice, including those relating to: (i) transaction fees, if applicable; (ii) your failure to pay in a timely manner; (iii) your exceeding your credit line; and (iv) fees attributable to the return of any checks.

P1.3 Billing, Payments, and Collection. (a) You will receive a billing statement for each billing cycle in which you have activity on the Account. The Bank may deliver any statement electronically to the email address that is then on file for you. (b) Payments are due by the due date shown on your billing statement. (c) You may pay the entire balance due or a portion of the balance, provided that you pay at least the minimum payment shown on the statement. In the event of a partial payment, you will be responsible for the unpaid balance.

P1.4 Deferred Payment Terms. (a) By using the Program, you agree that whenever there is an unpaid balance outstanding on the Account which is not paid in full by the due date shown on your billing statement, the Bank will charge you, and you will pay, interest on the unpaid balance of the Account from time to time, for each day from the date the transaction is posted to the Account until the date the unpaid balance is paid in full, at a variable rate equal to the Annual Percentage Rate applicable to the Account from time to time. (b) (i) The Annual Percentage Rate applicable to the Account will be: the greater of (a) 22% and (b) the sum of the highest "Prime Rate" published in the "Money Rates" section of *The Wall Street Journal* on the last business day of the month and the margin set forth below (the sum of the margin and the Prime Rate is herein called the "Floating Rate"). (ii) The Annual Percentage Rate will be adjusted on a monthly basis based on any fluctuation in the Floating Rate, if applicable. (iii) Any change in the Annual Percentage Rate based on the calculation described in this section will become effective on the first day of your next billing cycle. (iv) The margin which will be added to the Prime Rate to determine the Floating Rate will be 14.75% (using the Prime Rate in effect as of

March 31, 2013, the daily periodic rate would be .049315% and the corresponding annual percentage rate would be 18.00%). (v) The Account balance that is subject to a finance charge each day will include (a) outstanding balances, minus any payments and credits received by the Bank on the Account that day, and (b) unpaid interest, fees, and other charges on the Account. (vi) The Bank will charge a minimum finance charge of \$1.00 in any billing cycle if the finance charge as calculated above is less than \$1.00. (vii) Each payment that you make will be applied to reduce the outstanding balance of the Account and replenish your available credit line. (viii) The Bank may refuse to extend further credit if the amount of a requested charge plus your existing balance exceeds your credit limit.

P1.5 Account Cancellation and Suspension. (a) The Bank may at any time close or suspend the Account, and may refuse to allow further charges to the Account. (b) Cancellation or suspension will not affect your obligation to pay any amounts you owe.

P1.6 Amendments; Electronic Delivery; Termination. (a) The Bank can amend any of the provisions and terms related to the Program at any time by written notice to you (including by electronic notice via the email address that is then on file for you). You are consenting to electronic delivery of any amendments to the Program terms. (b) Each time you use the Program, you are signifying your acceptance of the terms then in effect. (c) An amendment becomes effective on the date stated in the notice and will apply to any outstanding balance on the Account. (d) The Bank may terminate the Program at any time and will notify you in the event of any termination. (e) Any outstanding obligation will survive termination of the Program.

P1.7 Governing Law. The Program and any advances are governed by and construed in accordance with the laws of the State of Utah and applicable federal law.

P1.8 USA PATRIOT Act. (a) Federal law requires financial institutions to obtain, verify and record information that identifies each person who opens an account. (b) The Bank asks that you provide identifying information, including your address and taxpayer identification number. (c) The Bank may also ask for additional identifying information, where appropriate, including asking that your representative who is opening the Account provide his/her name, address, date of birth, driver's license and/or other documents and information that will allow the Bank to identify him/her.

PBSMARTPOSTAGE TERMS AND CONDITIONS

If you have ordered pbSmartPostage™, your use of that product will be subject to the Terms of Use which are available at www.pbsmartpostage.com/terms and which are incorporated by reference.

- (c) If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power[®]), we will advance payment on your behalf to the USPS, subject to repayment by you under the terms of the postage advance program and billed separately from your rental fees.

R1.3 Meter Repair or Replacement.

If the Meter malfunctions or falls due to reasons other than an Excluded Circumstance, we will repair or replace the Meter.

R1.4 Terms of Use; Federal Regulations.

- (a) You may use the Meter solely for the purpose of processing your mail, provided that you are authorized by the USPS to use the Meter, and that you comply with (i) this Agreement, (ii) any operator guide and (iii) all USPS regulations.
- (b) You agree to use only attachments or printing devices authorized by us.
- (c) You must receive our written consent before moving the Equipment or Meter to a different location.
- (d) Federal regulations require that we own the Meter.
- (e) Tampering with or misusing the Meter is a violation of federal law.
- (f) Activities of the USPS including the payment of refunds for postage by the USPS to clients will be made in accordance with the current Domestic Mail Manual.
- (g) If the Meter is used in any unlawful scheme, or is not used for any consecutive 12 month period, or if you take the Meter or allow the Meter to be taken outside the United States without proper written permission of USPS Headquarters, or if you otherwise fail to abide by the postal regulations and this Agreement regarding care and use of the Meter, then this Agreement and any related Meter rental may be revoked. You acknowledge that any use of this Meter that fraudulently deprives the USPS of revenue can cause you to be subject to civil and criminal penalties applicable to fraud and/or false claims against the United States. The submission of a false or fraudulent statement can result in imprisonment of up to 5 years and fines of up to \$10,000 (18 U.S.C. 1001) and a civil penalty of up to \$5,000 plus an assessment of twice the amount falsely claimed (3 U.S.C. 3802). The mailing of matter bearing a fraudulent postage meter imprint is an example of a violation of these statutes.
- (h) You are responsible for immediately reporting (within 72 hours or less) the theft or loss of the Meter to us. Failure to comply with this notification provision in a timely manner may result in the denial of refund of any funds remaining on the Meter at the time of loss or theft.
- (i) You understand that the rules and regulations regarding the use of this Meter as documented in the Domestic Mail Manual may be updated from time to time by the USPS and it is your obligation to comply with any rules and regulations regarding its use.

R1.5 Rate Updates and Soft-Guard[®] Program.

- (a) Your Meter or Equipment may require periodic rate updates that you will obtain under our Soft-Guard program.
- (b) Under the Soft-Guard program, we will provide up to 6 rate updates during each 12 month period following the date of installation of the Equipment.
- (c) We will provide rate updates only if required due to a postal or carrier change in rate, service, ZIP Code[™] or zone change.
- (d) The Soft-Guard program does not cover any change in rates due to custom rate changes, new classes of carrier service, or a change in ZIP Code or zone due to equipment relocation.
- (e) If you have received the maximum number of rate updates under the Soft-Guard program, you will be billed separately for any additional rate update we provide.

R1.6 Collection of Information.

- (a) You authorize us to access and download information from your Meter. We may disclose this information to the USPS or other authorized governmental entity.
- (b) We will not share with any third parties (except the USPS or other governmental entity) individually identifiable information that we obtain about you in this manner unless required to by law or court order.
- (c) We may elect to share aggregate data about our clients' postage usage with third parties.

R1.7 Meter Care and Risk of Loss.

- (a) You agree to take proper care of the Meter(s) as stated in this Agreement and any user documentation.
- (b) You assume all risk of loss or damage to the Meter(s) while you have possession.

R2. VALUE BASED SERVICES

Value Based Services include services such as USPS[®] e-Return Receipt and USPS[®] Confirmation Services.

R2.1 Fees.

- (a) Any fees charged by the USPS for any Value Based Service you purchase are payable by you in the same way that you pay for postage.
- (b) The USPS is solely responsible for its services.
- (c) We are not responsible for any malfunctions of any part of the communication link connecting the Meter with the USPS data system.

R2.2 Ending the Value Based Services. We have the right to terminate the Value Based Services if the USPS discontinues offering the service or you breach your obligations under this Agreement and fail to cure the breach within thirty (30) days after you have been notified in writing.

UNITED STATES POSTAL SERVICE ACKNOWLEDGMENT OF DEPOSIT

UI.1 In connection with your use of a Postage Evidencing System as defined in the Code of Federal Regulations ("CFR"), you may transfer funds to the USPS through a Lockbox Bank for the purpose of prepayment of postage on Postage Evidencing Systems, generating evidence of postage, both PC Postage and meters (a "Deposit"), or you may transfer funds to the Bank for deposit into your Reserve Account.

UI.2 To the extent you deposit funds in advance of the use of any evidence of postage, you may make Deposits in the Lockbox Bank account identified as "United States Postal Service CMRS-PB" or make deposits in your Reserve Account, in either case through electronic means, including Automated Clearinghouse Transfers. The USPS may, at its discretion, designate itself or a successor as recipient of Deposits made by you to the Lockbox Bank account described above.

UI.3 Any deposit made by you in your Reserve Account is subject to the Postage By Phone[®] Reserve Account – Agreement and Disclosure Statement governing your Reserve Account.

UI.4 Any Deposit made by you in the Lockbox Bank account shall be credited by the USPS only for the payment of evidence of postage. Such Deposits may be commingled with Deposits of other clients. You

shall not receive or be entitled to any interest or other income earned on such Deposits.

UI.5 The USPS will provide a refund to you for the remaining account balances of Deposits held by the USPS. These refunds are provided in accordance with the rules and regulations governing deposit of funds for evidence of postage, published in the CFR.

UI.6 The Lockbox Bank, which shall collect funds on behalf of the USPS, shall provide PBI, on each business day, information as to the amount of each Deposit made to the USPS by you, so that PBI can update its records.

UI.7 PBI may deposit funds on your behalf. The USPS will make no advances of funds to you. Any relationship concerning advances of funds is between you and PBI, PBGFS and/or the Bank.

UI.8 You acknowledge that the terms of this Acknowledgement may be changed, modified, or revoked by the USPS, with appropriate notice.

UI.9 Postal Regulations governing the deposit of funds are published in the CFR or its successor. You acknowledge that you shall be subject to all applicable rules, regulations, and orders of the USPS, including future changes to such rules, regulations, and orders, and such additional terms and conditions as may be determined in accordance